

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

MICHAEL T. TYNDAL,

Plaintiff

VS.

SGT. MICHAEL SMITH,

Defendant

NO. 5: 05-CV-66 (WDO)

PROCEEDINGS UNDER 42 U.S.C. §1983
BEFORE THE U. S. MAGISTRATE JUDGE

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| RECOMMENDATION |
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Plaintiff MICHAEL T. TYNDAL has filed a letter with the Clerk of Court in which he contends that he has named not only SGT. MICHAEL SMITH as a defendant herein, but also the **UNADILLA POLICE DEPARTMENT**. Although the court, after a review of plaintiff's complaint, does not find this to be the case, in order to deal with plaintiff's contention, this RECOMMENDATION is entered, to-wit:

42 U.S.C. §1983 provides in part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. (Emphasis added).

Clearly, the **UNADILLA POLICE DEPARTMENT** is not a "person" as contemplated by Section 1983. Therefore, no action can be maintained against that entity under §1983 and **DISMISSAL** is appropriate prior to ordering service upon said defendant. **IT IS SO RECOMMENDED.**

Pursuant to 28 U.S.C. §636(b)(1), the plaintiff herein may serve and file written objections to this **RECOMMENDATION** with the district judge of this court to whom this case is assigned by filing the same in writing with the Clerk **WITHIN TEN (10) DAYS** after being served with a copy thereof.

SO RECOMMENDED, this 26th day of July, 2005.



A handwritten signature in blue ink that reads "Claude W. Hicks, Jr." The signature is stylized with large, flowing letters.

CLAUDE W. HICKS, JR.
UNITED STATES MAGISTRATE JUDGE